



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 28, 1996

Ms. Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Southfield Building, MS-4D
4000 South IH-35
Austin, Texas 78704-7491

OR96-0805

Dear Ms. Cory:

You ask that we reconsider our decision in Open Records Letter No. 96-481 (1996). Your request for reconsideration was assigned ID# 40155.

Open Records Letter No. 96-481 (1996) involved a request for information to the Texas Workers' Compensation Commission (the "commission") concerning sexual harassment complaints and investigations. The decision concluded in part that section 402.092 of the Labor Code did not apply to the requested information.

Section 402.092(b) provides that "[c]ommission investigation files are not open records for purposes of Chapter 552, Government Code." "Investigative files" are defined in section 402.092(d) as "any information compiled or maintained by the commission with respect to a commission investigation authorized by law." Open Records Letter No. 96-481 (1996) determined that section 402.092(b) did not apply to the requested information because this office construed the provision to apply to the "commission's investigation files concerning compliance with Texas worker's compensation laws." The decision concluded further that investigations into allegations of sexual harassment by commission employees is not an investigation concerning compliance with Texas worker's compensation laws.

You argue that this office incorrectly construed section 402.092(b) because "the Commission does not believe section 402.092(d) limits the confidentiality provision solely to investigations that involve workers' compensation law." You also argue that the

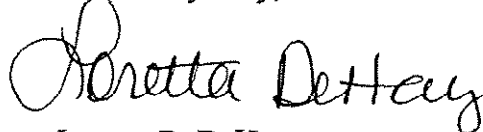
requested information is within the section 402.092(d) definition of "investigation file" because section 402.042(b)(1) authorizes the commission executive director to investigate misconduct. Finally, you argue that section 402.092 "was not necessary to make claim file or workers' compensation information confidential because that was already provided for by sections 402.081 through 402.091."

We affirm Open Records Letter No. 96-481 (1996) to the extent the decision concludes that section 402.092 is inapplicable to the requested information. We believe that if the legislature had intended the broad interpretation of section 402.092(b) that you suggest, it would have expressly done so. While inquiries into employee misconduct may be characterized as investigations, we believe the sort of investigation the legislature meant to protect under section 402.092 is one that is initiated by a complaint of a violation of a Texas worker's compensation law, rather than an internal referral for investigation of allegations of commission employee misconduct.

This interpretation is supported by legislative history surrounding the enactment of section 402.092. That section was added to the Labor Code during the Seventy-fourth Legislature under House Bill 1089. See Act of June 16, 1995, 74th Leg., R.S., ch. 980, § 1.19, 1995 Sess. Law Serv. 4916 (Vernon). The House Business and Industry Committee interpreted this provision to protect "the agency's investigative files from public disclosure in order to improve the agency's ability to investigate fraud and develop cases." House Business and Industry Comm., Bill Analysis, H.B. 1089, 74th Leg., R.S. (1995). We believe that the statement "to investigate fraud and develop cases" refers to the commission regulatory authority to investigate complaints of violations of worker's compensation laws and does not apply to commission investigations into employee misconduct. Therefore, we conclude that our decision in Open Records Letter No. 96-481 (1996) regarding section 402.092 is correct.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Loretta DeHay", written in a cursive style.

Loretta R. DeHay
Assistant Attorney General
Open Records Division

Ref.: ID# 40155

cc: Mr. Ryan Serber
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